

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Yechiel M. Weinberger,
individually and on behalf of all others similarly situated,
Plaintiff,

-v.-
Halsted Financial Services, LLC, and LVNV Funding,
LLC;

Defendants.

Index No.: 7:21-cv-9001

**CLASS ACTION COMPLAINT
DEMAND FOR JURY TRIAL**

Plaintiff Yechiel M. Weinberger brings this Class Action Complaint by and through his attorneys, Stein Saks PLLC, against Defendant Halsted Financial Services, LLC ("Halsted") and LVNV Funding, LLC ("LVNV"), individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff's counsel, except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff's personal knowledge.

INTRODUCTION/PRELIMINARY STATEMENT

1. The Fair Debt Collection Practices Act ("FDCPA") was enacted in response to the "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors." 15 U.S.C. §1692(a). This was because of the concern that "abusive debt collection practices contribute to the number of personal bankruptcies, to material instability, to the loss of jobs, and to invasions of individual privacy." *Id.* Congress concluded that "existing laws...[we]re inadequate to protect consumers," and that "'the effective collection of debts' does not require 'misrepresentation or other abusive debt collection practices.'" 15 U.S.C. §§ 1692(b) & (c).

2. The purpose of the Act was not only to eliminate abusive debt collection practices, but also to ensure "that those debt collectors who refrain from using abusive debt collection practices

are not competitively disadvantaged." *Id.* § 1692(e). After determining that the existing consumer protection laws were inadequate. *Id.* § 1692(b), the Act gave consumers a private cause of action against debt collectors who fail to comply with it. § 1692k.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this class action pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692 et seq. The Court has pendent jurisdiction over state law claims, if any, in this action pursuant to 28 U.S.C. § 1337(a).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1331(b)(2) as this is where the Plaintiff resides as well as a substantial part of the events or omissions giving rise to the claim occurred.

NATURE OF THE ACTION

5. Plaintiff brings this class action on behalf of a class of New York consumers under § 1692 et seq. of Title 15 of the United States Code, also known as the Fair Debt Collections Practices Act ("FDCPA"), and

6. Plaintiff is seeking damages and declaratory relief.

PARTIES

7. Plaintiff is a resident of the State of New York, County of Rockland.

8. Defendant Halsted Financial Services, LLC is a "debt collector" as the phrase is defined in 15 U.S.C. § 1692(a)(6) and used in the FDCPA.

9. Halsted has a service address at Corporation Service Company, 80 State Street, Albany, NY, 12207 – 2543.

10. Upon information and belief, Halsted is a company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts, and that regularly collects debts alleged to be due another.

11. Defendant LVNV is a "debt collector" as the phrase is defined in 15 U.S.C. § 1692(a)(6) and used in the FDCPA.

12. LVNV has a service address at Corporation Service Company, 80 State Street, Albany, NY, 12207 – 2543.

13. Upon information and belief, LVNV is a company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts.

CLASS ALLEGATIONS

14. Plaintiff brings this claim on behalf of the following case, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3).

15. The Class consists of:

- a. all individuals with addresses in the State of New York;
- b. to whom Defendant Halsted sent a collection letter;
- c. on behalf of Defendant LVNV;
- d. attempting to collect a consumer debt;
- e. claiming to offer a payment "agreement" or "arrangement";
- f. consisting of only a single lump sum payment of the full amount of the alleged debt;
- g. which letter was sent on or after a date one (1) year prior to the filing of this action and on or before a date twenty-one (21) days after the filing of this action.

16. The identities of all class members are readily ascertainable from the records of Defendants and those companies and entities on whose behalf they attempt to collect and/or have purchased debts.

17. Excluded from the Plaintiff Class are the Defendants and all officers, members, partners, managers, directors and employees of the Defendants and their respective immediate families, and legal counsel for all parties to this action, and all members of their immediate families.

18. There are questions of law and fact common to the Plaintiff Class, which common issues predominate over any issues involving only individual class members. The principal issue is whether the Defendants' written communication to consumers, in the forms attached as Exhibit A, violate 15 U.S.C. §§ 1692e and 1692f.

19. The Plaintiff's claims are typical of the class members, as all are based upon the same facts and legal theories. The Plaintiff will fairly and adequately protect the interests of the Plaintiff Class defined in this complaint. The Plaintiff has retained counsel with experience in handling consumer lawsuits, complex legal issues, and class actions, and neither the Plaintiff nor his attorneys have any interests which might cause them not to vigorously pursue this action.

20. This action has been brought, and may properly be maintained, as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community interest in the litigation:

- a. **Numerosity:** The Plaintiff is informed and believes, and on that basis alleges, that the Plaintiff Class defined above is so numerous that joinder of all members would be impractical.

- b. **Common Questions Predominate:** Common questions of law and fact exist as to all members of the Plaintiff Class and those questions predominate over any questions or issues involving only individual class members. The principal issue is whether the Defendants' written communication to consumers, in the forms attached as Exhibit A, violate 15 U.S.C. § 1692e and §1692f.
- c. **Typicality:** The Plaintiff's claims are typical of the claims of the class members. The Plaintiff and all members of the Plaintiff Class have claims arising out of the Defendants' common uniform course of conduct complained of herein.
- d. **Adequacy:** The Plaintiff will fairly and adequately protect the interests of the class members insofar as Plaintiff has no interests that are adverse to the absent class members. Plaintiff is committed to vigorously litigating this matter. Plaintiff has also retained counsel experienced in handling consumer lawsuits, complex legal issues, and class actions. Neither the Plaintiff nor counsel have any interests which might cause them not to vigorously pursue the instant class action lawsuit.
- e. **Superiority:** A class action is superior to the other available means for the fair and efficient adjudication of this controversy because individual joinder of all members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum efficiently and without unnecessary duplication of effort and expense that individual actions would engender.

21. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that the questions of law and fact common to members of the Plaintiff Class

predominate over any questions affecting an individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

22. Depending on the outcome of further investigation and discovery, Plaintiff may, at the time of class certification motion, seek to certify a class(es) only as to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).

FACTUAL ALLEGATIONS

23. Plaintiff repeats the above paragraphs as if set forth here.

24. Some time prior to November 24, 2020, an obligation was allegedly incurred to non-party Capital One Bank (USA) N. A. ("Capital One").

25. The obligation arose out of a transaction in which money, property, insurance or services, of which the subject transactions, were incurred for personal purposes, specifically personal credit.

26. The alleged Capital One obligation is a "debt" as defined by 15 U.S.C. § 1692a (5).

27. Capital One is a "creditor" as defined by 15 U.S.C. § 1692a (4).

28. According to the letter described below, LVNV purchased the alleged debt from Capital One.

29. Defendant LVNV collects and attempts to collect debts incurred or alleged to have been incurred for personal, family or household purposes on behalf of creditors using the United States Postal Services, telephone and internet.

30. Upon information and belief, LVNV contracted with Halsted to collect the alleged debt.

31. Defendant Halsted collects and attempts to collect debts incurred or alleged to have been incurred for personal, family or household purposes on behalf of creditors using the United States Postal Services, telephone and internet.

Violation – November 24, 2020 Collection Letter

32. On or about November 24, 2020, Defendant Halsted, on behalf of LVNV, sent the Plaintiff a collection letter regarding the alleged debt originally owed to Capital One. A copy of this letter is attached as Exhibit A.

33. The Letter states there is a \$666.17 balance due.

34. The Letter then states:

This communication serves as your written verification for the terms of this agreement that have been authorized on the above referenced debt. Any variation from the provisions outlined in this letter, without consent from this office, may nullify this offer. This arrangement must be secured by either check or card.

35. Under the above-quoted language about an alleged payment arrangement, the Letter states: A payment on this amount of \$666.17 is due.

36. However, this is not a payment arrangement or settlement offer.

37. The Letter is simply demanding full payment of the alleged debt.

38. Yet the Letter deceptively cloaks this fact in terms of an “agreement” or “arrangement” to coerce Plaintiff into paying the full amount.

39. Debt buyers routinely accept less than the full balance as settlement.

40. Plaintiff is aware that this is routine.

41. LVNV regularly accepts less than the full balance of an alleged debt to settle an account in full.

42. Plaintiff was led to believe that Defendants were offering some sort of discount.

43. But the letter is unclear about this.

44. Defendants’ letter is therefore misleading, deceptive, and unfair in collecting on the alleged debt.

45. Plaintiff was therefore confused as to how to properly handle this debt.

46. Plaintiff was therefore forced to waste time and money in determining his response to the Letter.

47. Plaintiff was therefore unable to evaluate his options of how to handle this debt.

48. Plaintiff would have pursued a different course of action were it not for Defendants' violations.

49. In addition, Plaintiff suffered emotional harm due to Defendants' improper acts.

50. These violations by Defendants were knowing, willful, negligent and/or intentional, and Defendants did not maintain procedures reasonably adapted to avoid any such violations.

51. Defendants' collection efforts with respect to this alleged debt from Plaintiff caused Plaintiff to suffer concrete and particularized harm, *inter alia*, because the FDCPA provides Plaintiff with the legally protected right to be not to be misled or treated unfairly with respect to any action for the collection of any consumer debt.

52. Defendants' deceptive, misleading and unfair representations with respect to their collection efforts were material misrepresentations that affected and frustrated Plaintiff's ability to intelligently respond to Defendants' collection efforts because Plaintiff could not adequately respond to Defendants' demand for payment of this debt.

53. Defendants' actions created an appreciable risk to Plaintiff of being unable to properly respond or handle Defendants' debt collection.

54. Plaintiff was confused and misled to his detriment by the statements in the dunning letter, and relied on the contents of the letter to his detriment.

55. Congress is empowered to pass laws and is well-positioned to create laws that will better society at large.

56. As it relates to this case, Congress identified concrete and particularized harms with close common-law analogues to the traditional torts of fraud and harassment.

57. Plaintiff has a right not be subject to collections actions that are deceptive and harassing.

58. Yet Defendants' letter was.

59. As a result of Defendants' deceptive, misleading, unfair and false debt collection practices, Plaintiff has been damaged.

COUNT I
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. §1692e *et seq.*

60. Plaintiff repeats the above paragraphs as if set forth here.

61. Defendants' debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e.

62. Pursuant to 15 U.S.C. §1692e, a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.

63. As described above, Defendants violated said section by deceptively and/or misleadingly collecting a debt in violation of §§ 1692e, 1692e (2), and 1692e (10).

64. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendants' conduct violated Section 1692e *et seq.* of the FDCPA and is entitled to actual damages, statutory damages, costs and attorneys' fees.

COUNT II
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. §1692f *et seq.*

65. Plaintiff repeats the above paragraphs as if set forth here.

66. Alternatively, Defendants' debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692f.

67. Pursuant to 15 U.S.C. §1692f, a debt collector may not use any unfair or unconscionable means in connection with the collection of any debt.

68. Defendant violated this section by unfairly collecting the alleged debt as described above.

69. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendants' conduct violated Section 1692f et seq. of the FDCPA and is entitled to actual damages, statutory damages, costs and attorneys' fees.

DEMAND FOR TRIAL BY JURY

70. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Yechiel M. Weinberger, individually and on behalf of all others similarly situated, demands judgment from Defendants Halsted and LVNV as follows:

- i. Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative, and Eliyahu Babad, Esq. as Class Counsel;
- ii. Awarding Plaintiff and the Class statutory damages;
- iii. Awarding Plaintiff and the Class actual damages;
- iv. Awarding Plaintiff costs of this Action, including reasonable attorneys' fees and expenses;
- v. Awarding pre-judgment interest and post-judgment interest; and

vi. Awarding Plaintiff and the Class such other and further relief as this Court may deem just and proper.

Dated: November 2, 2021

Respectfully submitted,

Stein Saks PLLC

/s/ Eliyahu Babad

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